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August 4, 2010

Office of General Counsel
Federal Elections Commission
999 E Street, N.W.
Washington, D.C. 20463

MUR # 6344

Dear Sir/Madam:

Re: Complaint against United Public Workers, AFSCME Local 646, AFL-CIO
de: May 22, 2010 special election, Hawaii Congressional District #1

This Complaint is made pursuant to and in accordance with 2 U.S.C. § 437g and 11 CFR § 111, *et seq.*

The named respondents are:

Dayton Nakanelua, State Director
Clifford "Chip" Uwaine, Executive Assistant to the State Director
Laurie Santiago, Oahu Division Director
United Public Workers, AFSCME Local 646, AFL-CIO

located at:

1426 N. School St.
Honolulu, HI 96817
808-847-2631

The allegations herein are made from personal knowledge unless otherwise indicated.

1. I am an attorney licensed to practice in the State of Hawaii, License No. 8940.
2. On August 3, 2007, I interviewed for the position of Staff Attorney with United Public Workers, AFSCME Local 646, AFL-CIO (hereinafter, "UPW"). The interview was conducted by Clifford "Chip" Uwaine, UPW Executive Assistant to the State Director (hereinafter, "Uwaine.") During this interview, Uwaine made general remarks about UPW's involvement in electoral campaigns. I clearly remember remarks approximating,

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"while UPW cannot require staff participation in political campaigns, let's put it this way, we do strongly encourage it."

3. On August 13, 2007, I attended a second interview conducted by Uwayne and Dayton Nakanelua, UPW State Director (hereinafter, "Nakanelua"). During that interview, I informed Uwayne and Nakanelua that I had "two disclosures" to make. One of these disclosures was that I do not "sign-wave," a political campaigning tactic that involves standing curbside typically on busy streets at busy times while holding and waving candidate campaign signs at passing motorists. I explained my reasons. I remember attempting to take off any "sharp edge" my statement may have had by jibing, "but if the union wants to rent me a car, I would be happy to deliver the coffee and malasada (doughnuts) to the sign-wavers." At the conclusion of that interview, Nakanelua offered me the position.
4. On August 27, 2007, I commenced employment with UPW. The scope of my responsibilities as Staff Attorney included representation in contractual grievance arbitrations and statutory prohibited practices complaints. The position did not call for nor did I perform any duties commonly associated with general counsel. Uwayne was designated my immediate supervisor.
5. Sometime after I commenced employment, Nakanelua issued a "Policy Directive" informing staff that we needed his approval of any and all outside employment. I thereafter submitted a written request for approval of my employment at a local retail farmers' market on Saturday's from 6 am - noon. Nakanelua expressly approved the request.
6. At various times since the date of my hire, UPW announced either via internal email or written memoranda that UPW staff would be participating in a sign-waving activity in support of some candidate or issue. I believe that up until March 2010, all such campaigns were either local or statewide. I did not participate in any of them. I believe it was sometime late 2009 or early 2010 that Uwayne said to me in words approximating, "Laurie [Santiago] says you haven't been doing any sign-waving when asked." I then asked him, "Don't you remember? I told you and Dayton [Nakanelua] during my interview that I do not sign wave." He replied, no, he did not remember.
7. A special election was conducted this past spring in Hawaii to fill a vacancy in the U.S. House of Representatives due to the resignation of former Hawaii Congressman Neil Abercrombie. Balloting commenced May 1, 2010 and closed on May 22, 2010 at 6:00 p.m. HST.
8. Sometime in mid to late March 2010, an email was distributed to UPW's Oahu's staff informing us that UPW's "sign-waving" in support of special election Congressional candidate Colleen Hanabusa would take place every Friday at 4:30 p.m. at the corner of

Houghtailing and Vineyard Streets, Honolulu. The email was distributed via UPW's in-house email "@upwhawaii.org" network. I received the email at the address of "yaindl@upwhawaii.org." I believe the email stated that staff should meet in the UPW parking lot at 4:30 to car pool to the venue. I believe the email was initiated by Santiago.

9. UPW's official work week and hours day are Monday - Friday, 7:30 a.m. - 4:30 p.m.
10. The Hanabusa campaign signs used by UPW staff in their sign-waving activities were stored in the UPW basement.
11. UPW staff did engage in sign-waving on certain if not all Fridays commencing sometime late March 2010. I do not know when or if UPW staff participation in this activity ended. I did not participate.
12. Sometime within ten (10) or so days prior to April 5, 2010, an email addressed to all UPW Oahu staff was received from the Office of the State Director [Nakanelua]. I received it at my yaindl@upwhawaii.org address. I believe the subject line was: Mandatory Staff Meeting. The email stated that all staff were required to attend a meeting on Monday, April 5, 2010, at 10:00 a.m., at UPW's Honolulu office, and that any absences from the meeting must be formally requested and approved by Nakanelua. No other information was provided.
13. Allegations ## 14-24, *infra*, each concern the April 5, 2010 mandatory staff meeting event.
14. I attended the mandatory staff meeting on Monday, April 5, 2010. The meeting was presided over by Nakanelua and Uwaine. The meeting took place in UPW's second floor conference room. With the exception of three (3) to four (4) Oahu staffpersons, each of whose absence Nakanelua recognized by name, the entire Oahu staff was in attendance. Other Oahu staff in attendance included executive staff-members, business agents, receptionists, clerks, and UPW's custodian. The total number of staff was, I believe, anywhere from 30-40 persons. Those absent definitely included Caroldean Kahue, Faatea Faatua, and Terry Lau. Diana Berndt also may have been absent.
15. A union official later told me that the main entrance door to the UPW building was locked for the duration of the April 5, 2010 meeting.
16. The April 5, 2010 mandatory meeting had two (2) topics. (The second one concerned a scheduled rally at the state capitol later later that week in support of UPW's correctional officer members). The first item on the agenda of the mandatory meeting was candidate Colleen Hanabusa's special election campaign for Congress. Nakanelua delivered initial remarks including generally, as follows: *A recent poll conducted by Ms. Hanabusa*

indicated that she was trailing two other candidates. It is very important to UPW, working people in Hawaii, and our US Senators Akaka and Inouye that Hanabusa win. UPW Oahu staff are being asked to contribute to Ms. Hanabusa's campaign in four ways. The four ways:

- 1) sign-waving Fridays, as already underway;
 - 2) phone banking at UPW's Honolulu office, Mondays-Thursdays, 4:30-??:?? p.m. (including Nakanelua's directing UPW Director of Fiscal and Membership Services Jeanne Endo to secure the lines and set-up);
 - 3) door to door canvassing Saturday mornings; and
 - 4) making a financial contribution.
17. Nakanelua concluded his remarks by stating that any staff who may need to request an exemption from any of these activities should "come see [him]."
18. Uwaine followed Nakanelua with opening remarks approximating, *Dzyton* [Nakanelua] is "too kind" or "being too easy." He, however, did go on to clearly and precisely say, "It is expected that all staff will sign wave on Fridays, phone bank Monday through Thursdays, and canvass on Saturdays." Uwaine talked about Nakanelua and him recently having to "dodge bullets" from members who were agitating over contract furloughs and pay cuts and arguing that since "an injury to one is an injury to all," UPW's staff likewise should be furloughed and receive pay cuts. Uwaine said that we should each know that even though Nakanelua had volunteered to take a one day furlough, that he and Nakanelua are firm that staff will not be furloughed or experience a pay cut.
19. As I sat through these presentations, I remember thinking, ok, well as applied to me, (1) No sign-waving for me, that is established; 2) phone banking, that is a possibility; 3) no-can canvass, I work Saturday mornings; and 4) money gift, I did not ponder.
20. I believe after Uwaine spoke Nakanelua made some additional remarks.
21. Uwaine either then said or continued, *verbatim*, "And any of you who may have a part time job on Saturdays, or who may be involved in other activities like coaching, you are to inform your employer or team that you are not going to be available to them for the next six (6) weeks. Any questions?"
22. Seated next to me was UPW Business Agent, Petrocelli Kesi. I know that he coaches his daughter's PAL basketball team, although I did not know what day practices might be held. I considered his situation as well as the likelihood that other staff members were similarly situated as Petro and me.

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23. I raised my hand. I clearly remember stating that it was wonderful that staff were provided a "menu of opportunities" to support Ms. Hanabusa's campaign, but that it was "highly inappropriate to require that any staff-person forego work or responsibilities to community or family to do volunteer work, especially when there were so many different ways to contribute to the campaign." I also believed it was not uncommon knowledge that it was illegal for UPW to compel voluntary elections contributions from staff of any sort at any time, but said nothing because I was seeking to advocate for my co-workers, not accuse our employer.
 24. I can recall two (2) specific staff people soon after conclusion of the meeting thanking me for "speaking up." There may have been a third.
 25. Upon adjournment of the April 5, 2010 mandatory meeting, I returned to my office and prepared a written memo addressed to Nakanelua, and may have copied Uwayne on it. I delivered the memo to Nakanelua that same afternoon, April 5, 2010. The memo itemized my concerns with, in particular, Uwayne's conduct in ordering staff to forego responsibilities to other employers, family, and community in order to "volunteer" in Ms. Hanabusa's campaign. I planned to research and brief the legal questions raised by UPW's conduct in compelling candidate contributions from its staff people upon my completion of a complex post-hearing brief due April 16, 2010.
 26. Neither Nakanelua nor Uwayne ever has discussed with me the events of or my memo dated April 5, 2010.
 27. I did not thereafter participate in any of the mandatory election campaign activities. I do know UPW staff did sign wave on Friday, April 9, 2010 because I continued to work at my desk on the post-hearing brief on that date, and was aware of staff convening to leave to sign wave at around 4:30 p.m. and remained at my desk after their return maybe ninety (90) minutes later.
 28. During the week of April 5-9, 2010, I had informed Uwayne from time to time via email and expressed feeling anxious yet confident about timely completing the post-hearing brief.
 29. On Wednesday, April 7, 2010, I purchased a new computer for use at home, a purchase I had been delaying as long as possible, and would have to work at home finishing the brief. I worked at home the entire next week, logging seventy-two (72) hours from Monday, April 10, 2010 until approximately 2:00 p.m., April 16, 2010.
 30. At approximately 2:00 p.m. on April 16, 2010, UPW Legal Clerk Marlene Alvey came to my home to deliver materials for packaging and mail the brief. As she was leaving, she stated that "Chip" [Uwayne] was here" and "I guess he has something for you. I

don't know." I figured that he had soup. When I looked up my stairwell, I saw Uwayne and Santiago. I invited them in and said, "Are you guys here to help? Awesome." Uwayne said that he had something for me. He handed me an envelope. In the envelope was a letter dated that same day April 16, 2010, signed by Nakanelua and informing me that UPW was terminating my employment effective close of business that day.

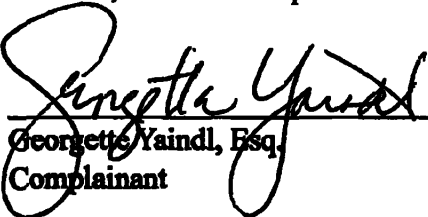
31. The letter was dated, signed by Nakanelua, and delivered to me on April 16. Nakanelua was in Washington D.C. on April 16 and had been there as early as Sunday, April 11, 2010.
32. My work record at UPW was impeccable. I had received only the highest and best of praises from Nakanelua, members, arbitrators, and others.
33. After Uwayne and Santiago left my house, I quickly pulled myself together and completed and served the brief.
34. During the week of April 17-18, 2010, I learned that my colleague Terry Lau, UPW's Lobbyist, had received a letter of termination on April 16, as well. Lau told me that Uwayne had called him into Uwayne's office that afternoon, in the presence of BA Kesi, and handed him the letter. Lau was not at the April 5, 2010 mandatory meeting (see #15, *supra*). Lau has informed me that when he heard from other staff about what had happened at the meeting, he spoke with Nakanelua and told him he would not canvass on Saturdays because he, too, worked at the same farmers market as me, volunteering for a high school friend of his as he had been for 10 my years. Lau's termination occurred during the final critical weeks of the state legislative session.
35. Nakanelua's April 16, 2010 termination letters to me and Lau are the exact same, excepting the addressee.
36. Exhibit 1 is a true and accurate copy of Nakanelua's April 16, 2010 letter to me.
37. UPW has provided no justification for its termination of my employment to me, the State of Hawaii Unemployment Insurance Division, or to any other known person.
38. UPW terminated my employment because I orally and in writing challenged UPW's unlawful conduct in compelling contributions to electoral candidates from its staff and because I refused to participate in the illegal activities.
39. Notwithstanding that this Complaint need not provide citations to legal authority or discussion of Citizens United, I respectfully submit that the following regulations are relevant to the determination of the merits of this Complaint:

11 CFR § 114.1(a)(1)

11 CFR § 114.1(c)(1)(i) and (ii)
11 CFR § 114.1(j)
11 CFR § 114.2(f)(1) and (2)(iv)
11 CFR § 114.3 (a)(1)
11 CFR § 114.1(b)
11 CFR § 114.1(c)(3) and (4)
11 CFR § 114.4(c)(1)(2); (3)(iv); (4)(5) and (6)
11 CFR § 114.4(d)(1)(2) and (3)
11 CFR § 114.9 (b)(1)(i) and (ii); and (2)(i) and (ii)(C)
11 CFR § 114.9(e)

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40. I voted for Ms. Hanabusa and look forward to doing so again in the general election this November 2010.
41. I do not know if UPW ever went ahead with establishing a phone bank on its premises or if any staff have ever participated. I do not know if any Saturday door to door canvassing took or is taking place.
42. I believe that UPW has not formed or registered a federal political action committee.
43. Whereas my termination occurred in my home kitchen and I have not returned to the UPW building since, I do not possess any documentation referenced in this Complaint other than Exhibit 1, Letter of Termination, attached.

By my signature below, I hereby swear under penalty of law, that the foregoing is true, accurate, and based on personal knowledge unless otherwise so stated.


Georgette Yaendl, Esq.
Complainant

08/03/10
Date

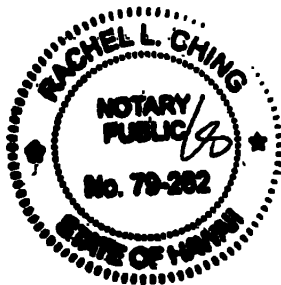
State of Hawaii

County of Honolulu } ss.

First Judicial Circuit

Document Description: Letter of General
Complaint against UPW etc
Office Counsel

Document Date: 8/3/10 No. Pages: 9



On this 3rd day of August, 2010,

before me personally appeared

Jerryette A. Yaind
name of signer

to me personally known, who, being by me duly sworn or affirmed, did say that such person executed the foregoing instrument as the free act and deed of such person, and if applicable in the capacity shown, having been duly authorized to execute such instrument in such capacity.

[Signature] 8/3/2010
Notary Signature Date

Notary Printed Name

My Commission expires: 7/23/2012